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THE UNITED STATES, THE WORLD COURT, AND THE SENATE

FOR many years the United States admittedly led the way in efforts to promote peaceful international relations. At the First Hague Conference in 1899 it was the United States delegates who were instructed by their government to work for the establishment of a permanent court of international justice. They put forward the proposal—that a real court sitting regularly and deciding questions according to accepted principles of international law should be established. The other nations were not ready for this and instead of the American the British proposal was adopted, by which the Hague Court of Arbitration was set up.

This Court still exists, but it is merely a panel of jurists from whom nations having a dispute may select a board of arbitrators. Useful as such an organization sometimes is, it has a number of disadvantages: it is not available at any moment, for agreement must be reached by the nations as to the men who shall constitute the board of arbitration for the particular dispute, and agreement upon the arbitrators sometimes proves almost as difficult as the settlement of the dispute itself. Moreover, the process of arbitration does not lend itself equally well to the settlement of all kinds of difficulties. By and large, arbitration means reaching a compromise acceptable to both sides rather than deciding the dispute strictly according to the law. Of course many differences between nations are not susceptible of a purely legal solution—because there is no law covering the question or because the essential facts are too confused for a definite line to be drawn or for other reasons. For such problems arbitration provides a solution, but by the time of the Second Hague Conference, in 1907, the delegates from the other nations agreed with the United States delegates that a court of justice was needed. A committee therefore began to work out the Statute for such a court, but had not found a method of selecting the judges which would satisfy both large and small nations when the World War broke out.

I. *Establishment of the World Court*

After the War, the Council of the League of Nations asked a Committee of Jurists to draw up a Statute for a Permanent Court of International Justice. Mr. Elihu Root was one of the members of this Committee and it was he who suggested the scheme for choosing the judges that was adopted, thus overcoming the difficulty which had fatally delayed the establishment of the court proposed in 1907. The present World Court was established along very much the lines originally proposed by our delegates to the two Hague Conferences.

This Court has been functioning for more than ten years, with all of the great powers of the world except Turkey, Russia, and the United States members. It is made up of fifteen judges, chosen to represent not their own nations but the main forms of civilization and the principal legal systems of the world. It has handled forty-four questions, many of them delicate and thorny, notably the post-war disputes between Germany and Poland. Many of the questions which the Court has thus successfully solved held the seeds of war. It is characteristic of the Court's work that in most instances it has brought about a solution of the difficulty at an early stage, before it has produced the friction from which war too often springs. For the most part, therefore, the work of the Court has not been spectacular.

The Registrar of the Court described its function accurately when he said to a group of American editors:

> "The Court, let it be understood once and for all, is no panacea against war and does not purport to be one. It is one of the international institutions calculated to bring about *in the long run* a reign of peace by means of the elimination of causes of friction between nations; by building up a system of jurisprudence; and finally, by educating humanity to look for the settlement of international disputes by pacific means rather than by the exercise of pressure, and, may be, violence. But it should not be expected as yet to be able in an emergency infallibly to ward off an impending menace of war . . . .
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> "If it succeeds in fulfilling the perhaps minor, though yet very important, tasks which properly belong to it, then it may be able to prepare the way for an era when the legal settlement of international conflicts will become something as obvious as is now the settlement of conflicts between individuals by municipal tribunals. It will then have well deserved of humanity and largely justified its existence."

It is significant that, although the Court depends solely upon public opinion to enforce its decisions, in not one of the forty-four cases thus far brought to it has its decision been flouted.

This is the Court, established largely as a result of American suggestions over a period of years, functioning in accordance with a statute upon which the impress of Mr. Root's mind is clear, working successfully (and thus meeting the traditional American test of value!) for more than ten years, to which the Senate still hesitates to permit the United States to adhere.

II. *The Question of the Adherence of the United States to the Court*

Almost from the time the Court began to function the question of our adherence has been before the Senate: It was first sent through to the Senate by the President on February 24, 1923. Three years later—on January 27, 1926—the Senate, by a vote of 76 to 17, approved our adherence to the Court with five reservations. That adherence has not yet been completed in spite of the fact that all the reservations, including the troublesome fifth, regarding advisory opinions, which—because of the looseness of its wording—had been the chief cause of the delay in the negotiations, were fully accepted by the signatory states in 1929, in the protocol of accession, one of those now awaiting ratification.

The three Court protocols which were signed by the United States, by the authority of the President, in 1929 and which the Foreign Relations Committee of the Senate finally reported favorably to the Senate on June 1 last are:

(1) The protocol of accession, mentioned above, which accepts the American reservations and provides the procedure for putting into operation those which require such procedure;

(2) the protocol of signature of the original Statute of the Court, signed by every nation when it adheres; and

(3) the revision protocol, covering proposed amendments to the original Statute, most of them necessitated by the increasing work of the Court.

III. *The Accepted Fifth Reservation and the Root Formula*

Of particular interest, of course, is the protocol of accession, and especially the part called the Root formula, setting forth the procedure for the operation of that much discussed fifth reservation.

The fifth reservation was intended by the Senate to protect the United States from the possibility that the Court might give an advisory opinion, without our consent, upon a question which we had already refused to submit for an actual judgment. The reservation provides that the Court shall not,

> "without the consent of the United States, entertain any request for an advisory opinion touching any dispute or question in which the United States has or claims an interest."

The Court, it should be said, has two sorts of jurisdiction: It can give actual judgments upon disputes brought to it by the parties. And it can, at the request of the Assembly or the Council of the League (it has always been the Council) give advisory opinions upon the legal aspects of questions with which the League has to

deal. The original Statute was explicit in requiring the consent of the parties for the Court's giving an actual judgment but did not mention advisory opinions. In actual practice the Court has followed the same arrangement for advisory opinions as for judgments and under the proposed revisions of the Statute this will be required by the basic constitution of the Court.

The discussion in this country over the Root formula for the operation of the fifth reservation, regarding advisory opinions, has been due largely to a failure to understand exactly *what the formula does.* As sometimes happens, the amount of public enlightenment has not been in direct proportion to the amount of discussion! But the whole matter is fundamentally simple:

The United States, naturally, does not want the Court, under the guise of giving an advisory opinion, to deal with a question concerning us without our consent, which we might already have refused to submit for an actual judgment.

The nations abroad, on the other hand, while they are entirely willing to give us this power of veto, do not, naturally, want to be prevented from appealing to the Court for an advisory opinion by our unwarranted intervention. And one phrase in our fifth reservation—"has *or claims* an interest"—seemed to them to open the door wide to our objecting to an advisory opinion upon any question.

The probability is, of course, that we would never interpose our objection unless we were directly concerned in the question; under these circumstances the other nations were entirely willing that we should have the right to prevent the Court's giving the opinion. On the other hand, there is every reason to suppose that the nations abroad would be ordinarily considerate of our interests, whatever the exact wording of the agreement. But the discussion had been so long and so involved that it had become impossible to depend solely upon the exercise of common sense on both sides and so the very explicit protocol of accession was adopted.

The protocol begins by accepting all the American reservations, *including the fifth.* It goes on, in Article 5, to arrange for an exchange of views between the United States and the Council of the League when the Council is still in the stage of discussing whether or not to ask the Court for an advisory opinion. If, at this early stage, the United States expressed objection, the likelihood is that the Council would not ask the Court for the opinion or if it did it would rephrase its request so as to get its own question answered and yet avoid what the United States did not want taken to the Court. But if, in spite of our objection, the Council took the request to the Court, we would still be able, under the accepted fifth reservation, to interpose our objection to the Court and so long as we remained in the Court the Court could not entertain the request for the advisory opinion over our objection.

There has been a good deal of misunderstanding because at this point the protocol of accession refers to the right the United States explicitly claims in another reservation to withdraw from the Court at will. But the United States does not have to withdraw. The reference to the possibility is made because the drafters of the protocol (among them, Mr. Root) felt that if the United States and the other members of the Court disagreed so completely over the proper function of the Court, the United States would probably prefer, at that point, to give up the experiment in co-operation, for, as Mr. Root pointed out when he explained to the Foreign Relations Committee of the Senate the force and effect of his formula, you cannot carry on an experiment in international co-operation by means of lawsuits.

The President, the Department of State, and such authoritative bodies as the American Bar Association (whose committee on international law made a special report on

the subject) agree with Mr. Root that the interests of the United States are fully protected by the pending protocols.

IV. *The Outlook for Action on the Protocols in the Senate*

Both major parties in their platforms last June endorsed the completion of our adherence to the Court. The President mentioned the Court in his annual message to Congress, as one of the matters which should be settled in the short session this winter. And the Democratic Steering Committee included the Court in the legislative program for this session.

Whether the Senate will indeed ratify the three Court protocols before March 4 depends to a measurable degree upon how much trouble the public generally is willing to take: If the senators hear from a large number of their constituents who feel strongly that the protocols should be ratified before the end of the present session the time will be found, in all probability, for dealing with them. After nearly ten years, it is not too much to ask, with considerable insistence, that the party leaders make this possible.

Virginia citizens who wish to have an effective part in shaping the foreign policy of the United States have opportunity now to take useful action by expressing their interest in early ratification of the Court treaties, and public opinion on the question so far as they are in touch with it, to Senator Glass and Senator Swanson.

If the argument is raised that the Senate should devote itself this winter to "practical" measures against the depression, it is well to remember that nothing would more directly aid in restoring world-wide economic stability, the foundations of which have been shaken, than a sense of security. Is it not possible that the endorsement by the United States of the principal of judicial settlement of international disputes would provide a stabilizing influence both at home and abroad?

ESTHER EVERETT LAPE

TEACHING THE SPIRIT OF INTERNATIONALISM IN THE CLASSROOM

I AM to speak to you this afternoon on "Teaching the Spirit of Internationalism in the Classroom." I feel that the subject is one which is so vital and so currently discussed in academic circles that I need not argue its necessity, and that I can step into it in high gear without any preliminaries.

During the last hundred and fifty years this world has seen more progress than in any similar period of time in history. Science and mechanical arts have entirely revolutionized our lives and it is mere repetition to say that our modern ships, airplanes, telegraphs, and telephones, not to mention radios, have literally annihilated time and space. Today, we are told, one can sit in London and see the happenings in New York City.

This making of foreign nations our next-door neighbors has changed our entire relationship to the affairs of other peoples. Trade, travel, and migrations move from one country to another in such quantities and numbers as to produce a new condition of national interdependence. So far as scope is concerned an entirely new type of human life has grown up. And this will become more and more true as the years pass.

In this case when disputes arise between nation and nation, eventually we, the people of the United States, shall be drawn into them. They will concern our trade, our citizens traveling abroad, our money invested in other lands. This means that the next war of any importance must be a World War because each nation's arteries of commerce are every nation's. There is no escaping it.

Nor is this all. We hear also that the chemists today are busy concocting such

This paper was read before a group meeting at the annual Educational Conference in Richmond on November 28, 1932.